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JUL 12 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

IN THE MATTER OF:

MM DOCKET NO. 94-10

Clayton, Missouri

DATE OF HEARING: June 24, 1994

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JUL 12 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

-----)
In Re Application of:)

THE LUTHERAN CHURCH/MISSOURI SYNOD)

MM Docket No. 94-10

For Renewal of Licenses of)
Stations KFUD/KFUD-FM)
Clayton, Missouri)
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The above-entitled matter came on for hearing pursuant to Notice before Judge Arthur I. Steinberg, Administrative Law Judge, at 2000 L Street, N.W., Suite 201, Washington, D.C., 20554, in Courtroom No. 3, on Friday, June 24, 1994, at 10:00 a.m.

APPEARANCES:

On behalf of The Lutheran Church:

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I N D E X

<u>Witness</u>	<u>Voir Dire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Marcia Cranberg					
By Ms. Schmeltzer		914			
By Mr. Honig	915		924,993		
By Ms. Laden			1013		
Examination by Judge:	991				
Dennis Stortz					
By Ms. Schmeltzer		1091		1093	
By Mr. Honig			1092		1095
<u>E X H I B I T S</u>					
	<u>Identified</u>	<u>Received</u>	<u>Withdrawn</u>	<u>Rejected</u>	
<u>Church</u>					
Exhibit No. 8	914	920			
Exhibit No. 11	1090	1092			
Exhibit No. 12	1097	1104			
Exhibit No. 13	1099	1106			
<u>NAACP</u>					
Exhibit No. 13	1079	1081			
Exhibit No. 14	1082				1085
Exhibit No. 15	1087	1088			
Exhibit No. 21		1052			
Exhibit No. 50					936
Exhibit No. 53		948			
Exhibit No. 54					951
Exhibit No. 55		958			
Exhibit No. 56					960
Exhibit No. 57			1053		
Exhibit No. 59					974
Exhibit No. 60					1072
Exhibit No. 61					1058
Exhibit No. 62					1060
Exhibit No. 65	1074				1077
<u>Joint</u>					
Exhibit No. 1	1044	1044			
Hearing Began: 10:00 a.m.		Hearing Ended: 5:22 p.m.			
Lunch Break Began: 1:05 p.m.		Lunch Break Ended: 2:15 p.m.			

P R O C E E D I N G S

JUDGE STEINBERG: The first thing I want to ask about is the Lauher draft and why doesn't Mrs. Schmeltzer give us a summary of what was done to attempt to locate it and the results of those efforts?

MS. SCHMELTZER: Okay. Well, I've been -- as I indicated when this matter first came up, Your Honor, we didn't -- I did not recall keeping any copies of the Lauher draft when that testimony was prepared. It was prepared out in St. Louis at the office of a law firm by a secretary that I had not dealt with before and, and I recall that there were several, several renditions because she made typographical errors, and my recollection is that as we went along they were just put in the waste basket.

I, I searched through my files and I have nothing from that particular interview. I, I have some notes from a prior interview, but they don't go to that point at all. And I have no notes from that interview, from myself and Mr. Lauher. And I've talked to the law firm out there and they haven't been able to find anything.

JUDGE STEINBERG: Okay. It appears to me as if a good faith attempt has been made and you were unable to find them. So, that ends that matter.

MR. HONIG: Your Honor, if, if I may, I'd like to know the name of the law firm and the name of the secretary

1 that did the typing?

2 MS. SCHMELTZER: I don't know the name of the
3 secretary. I mean, I don't -- I'm not certain of the name of
4 the secretary.

5 JUDGE STEINBERG: Okay.

6 MR. HONIG: Well, then the name of the attorney who
7 supervises the secretary.

8 MS. SCHMELTZER: I don't think that's -- there was
9 no attorney supervising at the time. There was only Mr.
10 Gottfried and me and the, and the secretary. It was on a
11 Saturday. There was no attorney supervising from that law
12 firm.

13 JUDGE STEINBERG: Okay. I --

14 MR. HONIG: We have a statement about a law firm,
15 the name of which I don't know. It, it's, it's --

16 JUDGE STEINBERG: Well --

17 MR. HONIG: -- it's not a meaningful statement
18 without at least knowing what law firm it is.

19 MR. GOTTFRIED: Mr. Honig, we're taking responsi-
20 bility.

21 MR. HONIG: But there's --

22 JUDGE STEINBERG: I think -- it appears to me that a
23 good faith search was made to find the materials. They are
24 unable to find them. The matter is closed. You may make
25 whatever arguments you wish in your Proposed Findings and

1 Conclusions concerning the change in Mr. Lauher's testimony.

2 This ends the matter as far as I'm concerned.

3 If Mrs. Schmeltzer and Mr. Gottfried want -- would
4 like to give you the name of the law firm, they are free to do
5 so. Perhaps you should have asked for the name of the law
6 firm on Monday. But this, this is going to be the last day of
7 the hearing. The record is going to be closed shortly and
8 thus ends this matter as far as I'm concerned.

9 Now, surrebuttal exhibits. Mrs. Schmelt-- I just
10 want to note for the record that Mrs. Schmeltzer exchanged --
11 distributed to Mr. Honig and Bureau counsel and myself three
12 exhibits for surrebuttal. She did that before we went on the
13 record. Let me ask what -- and I asked Mr. Honig informally
14 whether he got something earlier this morning and he said he
15 had. Why don't you describe, either one of you, what Mr.
16 Honig got?

17 MS. SCHMELTZER: I'll be happy to do that. Do you
18 want these marked for identification --

19 JUDGE STEINBERG: No. We'll --

20 MS. SCHMELTZER: -- at this point?

21 JUDGE STEINBERG: We'll do that later.

22 MS. SCHMELTZER: All right. What we sent to Mr.
23 Honig by fax and we've now supplied to all Parties in hard
24 copy is the Surrebuttal Testimony of Dennis Stortz. This goes
25 to the Declaration of Otis D. Woodard dated June 15, 1994,

1 which I believe was NAACP Exhibit 11.

2 We have also exchanged with respect to Mr. Miller
3 copies of two documents --

4 JUDGE STEINBERG: Richard Miller.

5 MS. SCHMELTZER: Richard Miller -- copies of two
6 documents from the Commission's files. One is an Opposition
7 to a Petition to Deny which alleged that Mr. Miller's station
8 suffered from EEO deficiencies. That petition had been filed
9 by the NAACP and Mr. Honig had been served with a copy of that
10 opposition when it was filed by Mr. Richard Miller.

11 And the second is a Commission Memorandum Opinion
12 and Order and Notice of Apparent Liability. It dealt with
13 several stations, and among those stations were -- was Mr.
14 Richard Miller's station, and he was admonished -- his station
15 was admonished for its EEO performance.

16 JUDGE STEINBERG: Okay. Now, let me ask Mr. Honig,
17 you --

18 MS. SCHMELTZER: And I'm sorry. That, that -- we
19 assumed that Mr. Honig would have received a copy of that
20 Memorandum Opinion and Order as well. By fax we served the
21 first page of those two documents. We have now supplied Mr.
22 Honig with the entire document.

23 JUDGE STEINBERG: Okay. And, and you did receive
24 the Surrebuttal Testimony of Dennis Stortz?

25 MR. HONIG: Yes.

1 JUDGE STEINBERG: And the first pages of the other
2 two documents?

3 MR. HONIG: Yes.

4 JUDGE STEINBERG: And you indicated to me that you
5 had the documents but they were in Florida?

6 MR. HONIG: That's right.

7 JUDGE STEINBERG: Okay. So, now you've got the
8 complete documents?

9 MR. HONIG: And I have reviewed them.

10 JUDGE STEINBERG: Okay. Do you --

11 MS. SCHMELTZER: If I, if I may just add to that,
12 the last page of Mr. Stortz's declaration, which is an attach-
13 ment, has previously been admitted into the record. It's one
14 of the attachments to Mr. Stortz's original testimony.

15 JUDGE STEINBERG: Oh, okay. Let me ask Mr. Honig,
16 do you need any time now before we start with Ms. Cranberg to
17 fax any material or make any phone calls that would -- will
18 enable you to be prepared for surrebuttal? I don't want to
19 rush you.

20 MR. HONIG: No, and I think this can be done easily.

21 JUDGE STEINBERG: Okay.

22 MR. HONIG: First, I think there, there's been a
23 slight mischaracterization of the Memorandum Opinion and Order
24 and Notice of Apparent Liability regarding Richard Miller's
25 station, which is KRJY-FM.

1 JUDGE STEINBERG: Okay. Let me, let me just say, is
2 this going to go to the substance of the proposed exhibit?
3 I'll tell you, because --

4 MR. HONIG: Substance and relevance.

5 JUDGE STEINBERG: Well, we'll do that -- when, when
6 the, when the documents are identified and offered, then we'll
7 do that. But all I'm trying to determine now is whether we
8 need to take a short break so that you can do -- remember
9 yesterday you, you thought perhaps we'd have to take a short
10 break so you could fax the things to various people? And I --
11 what I want to know is whether that, is whether that's
12 necessary.

13 MR. HONIG: No.

14 JUDGE STEINBERG: Okay.

15 MR. HONIG: Your Honor, I spoke with Mr. Miller this
16 morning. And I also want to report to the Court that as to
17 the subject of -- the other subject of the testimony, Reverend
18 Woodard, the testimony really relates to Kathy Woodard. Kathy
19 Woodard is Reverend Woodard's ex-wife.

20 You might recall from Monday that Reverend Woodard
21 received a call --

22 MS. SCHMELTZER: But, Your Honor, I, I would
23 object to this.

24 JUDGE STEINBERG: You -- this, this appears to go to
25 the substance --

1 MR. HONIG: No, no, no. It did not. It does not.
2 It goes to the, the wait -- it's a procedural report that I
3 need to --

4 JUDGE STEINBERG: Okay. Let me -- okay. Let me
5 just -- oh, it's a procedural report --

6 MR. HONIG: Yes, it is.

7 JUDGE STEINBERG: -- concerning the transmission of
8 these documents?

9 MR. HONIG: And I'm not going to talk --

10 JUDGE STEINBERG: Okay.

11 MR. HONIG: -- about the merits.

12 JUDGE STEINBERG: Okay.

13 MR. HONIG: Mr. Woodard received -- Reverend Woodard
14 received a call from Dennis Stortz indicating that, that Mr.
15 Stortz's view was that Kathy Woodard --

16 MS. SCHMELTZER: I'm going to object, Your Honor.
17 It seems to me that he is getting into merits of argument --

18 MR. HONIG: Your Honor, it's necessary --

19 MS. SCHMELTZER: -- here and, and it's not a --

20 MR. HONIG: -- for me to give this as --

21 MS. SCHMELTZER: -- preliminary matter.

22 MR. HONIG: -- as background in order for me to
23 describe what I'm about to describe.

24 JUDGE STEINBERG: Okay. Just --

25 MR. HONIG: May I please have some latitude?

1 JUDGE STEINBERG: Make it -- can you make it as
2 brief as possible, because I would like to commence with --

3 MR. HONIG: I understand --

4 JUDGE STEINBERG: -- today's business.

5 MR. HONIG: As I was saying, the call notified our
6 witness, Reverend Woodard, that, that KFUD's position was that
7 the calls had been made to Kathy Woodard. Thereafter we
8 undertook to try to find Kathy Woodard so that she could do a
9 -- an additional rebuttal declaration. We have found Kathy
10 Woodard. I spoke with her this morning. My clerk talked with
11 her last night before we received the surrebuttal testimony.
12 She indicated to both of us, and I understand has also indi-
13 cated to Reverend Woodard, who also talked with his former
14 wife, that, that she had information. And if Your Honor
15 doesn't want the substance of it, it's very brief information
16 which is -- which supplements and confirms Reverend Woodard's
17 rebuttal testimony. She and I went over a declaration, which
18 she agreed to sign today. It is being faxed to her. They're
19 an hour behind us, so it may just now being done, being done.
20 It will be faxed by her hopefully this morning, and she will
21 be available until 1:00 their time today if you need to put
22 her on speakerphone and ask her questions. The statement I
23 think is only two or three sentences long however.

24 JUDGE STEINBERG: Okay. Why don't we -- I under-
25 stand what you're saying. When at the conclusion of the

1 surrebuttal case I will give you an opportunity to request
2 whatever it is you want to request, and then I'll hear from
3 the opposing counsel and Parties. You, you're going to re-
4 quest sur-sur to this --

5 MR. HONIG: No. No, I'm, I'm --

6 JUDGE STEINBERG: Oh, you're not?

7 MR. HONIG: No. I'm putting her in as rebuttal
8 because it supplements --

9 JUDGE STEINBERG: Okay. Okay.

10 MR. HONIG: -- Reverend Woodard's testimony and Your
11 Honor --

12 JUDGE STEINBERG: Okay. Let's --

13 MR. HONIG: -- the reason I'm making it --

14 JUDGE STEINBERG: Let's, let's drop the matter now
15 and bring it up at the end of surrebuttal.

16 MR. HONIG: The difficulty, she's a part-time worker
17 --

18 JUDGE STEINBERG: Well, if --

19 MR. HONIG: -- and she's only --

20 JUDGE STEINBERG: -- if I, if I, if I -- I will deal
21 with that and that would be taken into consideration if --

22 MR. HONIG: But she won't be, she won't be reachable
23 later today. That's the problem.

24 JUDGE STEINBERG: We have the rest of the year, Mr.
25 Honig.

1 MR. HONIG: Okay.

2 JUDGE STEINBERG: I mean, I can't -- if I decide
3 that that information is going to come in and the Church would
4 like to -- an opportunity to confront her and cross-examine
5 her, it's obvious we can't do that today.

6 MR. HONIG: That's fine. Okay.

7 JUDGE STEINBERG: Maybe we can, but I'm not worried
8 about it.

9 MR. HONIG: Okay.

10 JUDGE STEINBERG: But at least Church is on notice.
11 Bureau is on notice. I'm on notice. And when you have that
12 document, exchange it.

13 MR. HONIG: Yeah. Now, there --

14 JUDGE STEINBERG: Okay. What else?

15 MR. HONIG: Oh, I'm sorry. There is one other
16 rebuttal exhibit that I have exchanged to the Parties and I
17 would like to exchange it to Your Honor and the Court. It is
18 coming in late. I would like to explain the circumstances
19 under which it is coming in late --

20 JUDGE STEINBERG: Well, let me, let me just --

21 MS. SCHMELTZER: We don't have it, Mr. Honig.

22 MR. GOTTFRIED: Your Honor set aside time for --

23 JUDGE STEINBERG: Yeah.

24 MR. GOTTFRIED: -- additional rebuttal exhibits and
25 we would like to --

1 JUDGE STEINBERG: Yeah.
2 MR. GOTTFRIED: -- witness, Your Honor --
3 JUDGE STEINBERG: Let's get Ms. --
4 MR. GOTTFRIED: -- and Mr. Honig can do that --
5 JUDGE STEINBERG: Here's what --
6 MR. GOTTFRIED: -- after his rebuttal.
7 JUDGE STEINBERG: I, I said yesterday that here's
8 what I'm going to do. We're going to present Ms. Cranberg.
9 I'm going to say to Mrs. Schmeltzer: does that complete your
10 direct case? She's going to say yes. I'm going to say: Mr.
11 Honig, complete your rebuttal case. We'll do it then.
12 MR. HONIG: May I, may I just manifest for the
13 record that I have exchanged -- and exchanged it so that the,
14 the Court --
15 JUDGE STEINBERG: You can give it to me too.
16 MR. HONIG: Okay. That's all I --
17 JUDGE STEINBERG: That will be nice.
18 MR. HONIG: I am -- and can I have it marked for
19 identification --
20 JUDGE STEINBERG: No.
21 MR. HONIG: -- and then it's -- that's it?
22 JUDGE STEINBERG: No.
23 MR. HONIG: Okay. Then I --
24 JUDGE STEINBERG: You'll do it when, when we -- when
25 we turn to your rebuttal, we will do it then.

1 MR. HONIG: Okay. This is the Declaration of Cari
2 O'Halloran.

3 JUDGE STEINBERG: Don't give it to the reporter,
4 please.

5 MR. HONIG: Don't give it the reporter.

6 JUDGE STEINBERG: Just, just give it to -- one copy
7 to me, one -- a couple copies to the Bureau, and --

8 MR. HONIG: Okay. This is formerly Cari Perez. And
9 we'll offer it to you when Your Honor requests us to.

10 JUDGE STEINBERG: Okay.

11 MR. HONIG: Okay.

12 JUDGE STEINBERG: Now, you -- do you have anything
13 specifically related to Ms. Cranberg?

14 MR. HONIG: Yes. There is one other matter relating
15 to Ms. Cranberg. Apparently Mr. Miller's deposition --

16 JUDGE STEINBERG: Reed Miller.

17 MR. HONIG: Reed Miller's.

18 JUDGE STEINBERG: Yeah, we have two Mr. Miller's so
19 we've got to use first names.

20 MR. HONIG: Mr. Reed Miller's deposition testimony
21 was -- is -- has been completed by the reporting service.
22 However, no one was in my office so they had -- so UPS left a
23 callback. So, I have not seen it, although they did try to
24 deliver it. As of yesterday I understand he had not signed
25 it. I would certainly have liked to be able to read it before

1 cross-examining Ms. Cranberg and want to know if it might --
2 there might be an arrangement for me to read it, and I think
3 it can be read in about 10 minutes, so that I can sharpen up
4 my examination of Ms. Cranberg.

5 JUDGE STEINBERG: When are you going to read it if
6 you don't have it?

7 MR. HONIG: I speed read. If it's here now I can
8 read it now.

9 JUDGE STEINBERG: Is it here now?

10 MS. SCHMELTZER: Your Honor, it was delivered to us
11 Monday or Tuesday.

12 MR. HORTON: I got it on Monday.

13 MS. SCHMELTZER: Yeah.

14 MR. ZAUNER: Did you bring it?

15 JUDGE STEINBERG: Well --

16 MS. SCHMELTZER: I didn't bring it with me.

17 MR. ZAUNER: We don't have it.

18 JUDGE STEINBERG: Anybody have it? Nobody has it.

19 MR. HONIG: Well, in that case, during a break might
20 it be possible for someone who has it to arrange for it to be
21 brought to the courtroom so I could read it before finishing
22 Ms. Cranberg's testimony?

23 JUDGE STEINBERG: If, if somebody wants to volunteer
24 to do that I've got no problem with that. You -- if somebody
25 wants to use the phone in my office and ask that a messenger

1 bring a copy of it over, that's fine.

2 MR. HONIG: Does the Bureau have it? You don't have
3 it? Would someone from --

4 MS. SCHMELTZER: We haven't made copies yet.

5 MR. HONIG: Well, can someone --

6 MR. GOTTFRIED: It's not our job, Mr. Honig.

7 JUDGE STEINBERG: Well, I'm not going to force them
8 to do it. But let's -- okay. Is that the only thing you have
9 preliminary to Ms. Cranberg?

10 MR. HONIG: Well --

11 MR. GOTTFRIED: Your Honor, I --

12 MR. HONIG: -- I'll bite my tongue. Yes, I do.

13 JUDGE STEINBERG: Wait.

14 MR. GOTTFRIED: -- be cooperative. I know the Judge
15 likes us to be cooperative. I'm not -- we're not here to do
16 Mr. Honig's work. Mr. Honig has made accusations about our
17 integrity and ethics and I'm not here to do his work or to
18 cooperate very much at this point. I apologize to the Court
19 for today, but it's just the way we feel.

20 MR. HONIG: Your Honor, every day counsel raises
21 this matter, and I again have to say to, to defend this that
22 the allegations were made were commensurate with the
23 misconduct alleged.

24 MR. GOTTFRIED: That's fine.

25 MR. HONIG: Period.

1 JUDGE STEINBERG: Okay.

2 MR. HONIG: And, and --

3 JUDGE STEINBERG: But we will deal with the Petition
4 to Enlarge Issues in due course. I don't want to hear any
5 more about it. If you want to be nice about it, you'll get a
6 copy of it over. If you don't, you won't. I'm not going to
7 make you.

8 MS. SCHMELTZER: But we don't have an extra copy at
9 this point.

10 JUDGE STEINBERG: That's fine. Let's proceed with
11 Ms. Cranberg. If someone would go get her?

12 (Off the record.)

13 (On the record.)

14 MS. SCHMELTZER: The Church calls Marcia Cranberg to
15 the witness stand.

16 JUDGE STEINBERG: Okay. Ms. Cranberg, before you
17 sit down would you raise your right hand?

18 Please be seated. And if you would, kindly state
19 your name and address for the record?

20 MS. CRANBERG: My name is Marcia Cranberg. My
21 address is 30 -- home address is --

22 JUDGE STEINBERG: Either.

23 MS. CRANBERG: -- business address is Arnold &
24 Porter, 1200 New Hampshire Avenue, Northwest, Washington,
25 D. C., 20036.

1 MS. SCHMELTZER: Ms. Cranberg -- oh, Your Honor, I
2 would like to have marked for identification as Church Exhibit
3 8 the Testimony of Marcia A. Cranberg.

4 JUDGE STEINBERG: Okay. The, the document consists
5 of nine pages of text and a bunch of attachments, six attach-
6 ments. And the document will be marked for identification as
7 Church Exhibit 8.

8 (Whereupon, the document referred to
9 as Church Exhibit No. 8 was marked
10 for identification.)

11 Whereupon,

12 MARCIA A. CRANBERG
13 having first been duly sworn, was called as a witness herein
14 and was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SCHMELTZER:

17 Q Ms. Cranberg, do you have a copy of what's been
18 marked for identification as Church Exhibit 8 before you?

19 A Yes, I do.

20 Q And do you have any additions, corrections, or
21 modifications to your testimony?

22 A I would like to make one clarification. On pages 4
23 and 5, paragraphs 9, 10, and 11 discuss conversations that I
24 had with Mr. Tom Lauher of KFUE. And I would like to clarify
25 that in paragraph 10 where there is a reference to Mr. Lauher

1 having called me at least once after an initial conversation
2 with him that, that that reference in paragraph 10 is to the
3 subsequent conversation that is described in paragraph 11. In
4 other words, I, I would like to clarify that I am describing
5 two and not three conversations with Mr. Lauher.

6 Q And, and with that clarification is your testimony
7 true and correct to the best of your knowledge, information,
8 and belief?

9 A Yes, it is.

10 MS. SCHMELTZER: Your Honor, I would move the
11 receipt of Church Exhibit 8.

12 JUDGE STEINBERG: Okay. Before we do that, Mr.
13 Horton, why don't you -- you -- why don't you enter an appear-
14 ance -- your appearance now. I apologize for not doing it
15 earlier.

16 MR. HORTON: Certainly. My name is Philip Horton of
17 the law firm of Arnold & Porter. I'm representing Ms.
18 Cranberg.

19 JUDGE STEINBERG: Thank you. Mr. Honig?

20 MR. HONIG: First, I'd like a brief voir dire.

21 VOIR DIRE EXAMINATION

22 BY MR. HONIG:

23 Q Ms. Cranberg, who drafted your testimony?

24 A The, the law firm of Fisher Wayland. I'm not
25 certain who at the firm.

1 Q And did you participate in the -- no, strike that.

2 A I should say I made edits. The -- Fisher Wayland
3 did a first draft and sent it to me and I made some edits.

4 MR. HONIG: Okay. No further voir dire. Your
5 Honor, I do have some objections.

6 JUDGE STEINBERG: Okay. Go ahead.

7 MR. HONIG: First, on page 5, paragraph 12, the
8 second sentence which runs over onto paragraph three, I object
9 to the clause which states, "...which the NAACP had apparently
10 filed and served directly on my client without serving me a
11 copy." Your Honor, this isn't a comparative hearing and, and
12 how the NAACP effected service of a pleading in this case has
13 nothing to do with the subject matter of this case.

14 MS. SCHMELTZER: Your Honor, this is the way that
15 Ms. Cranberg received the Petition to Deny. In fact, she was
16 not listed on the Certificate of Service. I don't see any-
17 thing that -- it -- I think this bears on her testimony and is
18 related to her -- the way that she received the pleading and
19 her consultations with her client which succeeded that.

20 MS. LADEN: Your Honor, I also wanted to point out
21 that there was, I believe, offered, perhaps received, a draft
22 of a Response prepared by Mr. Stortz. I think that was of-
23 fered by the NAACP. And I think that this explains a little
24 bit why Mr. Stortz might have drafted a Response before the
25 attorneys drafted a Response. So, for that reason I think

1 it's helpful.

2 MR. HONIG: I would not object to it coming in if it
3 -- with an instruction that it's not to be used in a manner
4 critical to the NAACP. If Your Honor wants an explanation of
5 why we served it on the station rather than the lawyers, there
6 is a reason. I would be happy to provide it.

7 JUDGE STEINBERG: I'm going to overrule the objec-
8 tion and it can be used in any manner in which anyone sees fit
9 to use it. The, the, the manner in which the NAACP serves
10 pleadings, to the best of my recollection, wasn't included in
11 the issues. So, if, if someone writes a paragraph attacking
12 the NAACP's manner of serving pleadings, it's very unlikely
13 that that paragraph will wind up in a, in an ID. So, I think
14 you can be assured by that. So, the objection is overruled.

15 MR. HONIG: Okay. Now, in paragraph 13 on page 6, I
16 object to a phrase in the middle of the first sentence. The
17 sentence begins, "I want to address the misunderstanding which
18 has arisen in connection with the Opposition to Petition to
19 Deny..." and I object to the words, "misunderstanding which
20 has arisen in connection with the". It's harmless if it -- if
21 that's characterized as the opinion of the witness, but I
22 don't want it to come into the truth of the matter asserted
23 because it's, it's not just a misunderstanding, in our view.

24 JUDGE STEINBERG: Well, this is -- a lot of this is
25 opinion. It's the witness's state of mind and it -- and

1 clearly it's her belief. It's her opinion that there was a
2 misunderstanding. If you want to cross-examine and establish
3 that it was more than a misunderstanding or less than misun-
4 derstanding, that's up to you, but this is, this is her opin-
5 ion and state of mind and it will go in for that purpose.

6 MR. HONIG: Okay.

7 JUDGE STEINBERG: So, the objection is overruled.

8 MR. HONIG: And I have the same objection regarding
9 the last two sentences of paragraph 13, same reason.

10 JUDGE STEINBERG: Okay. Same ruling.

11 MR. HONIG: Okay. In footnote 2 I have, I have to
12 object to everything past the first -- well, actually, I think
13 I need to object to the entire footnote in that it, it, it
14 appears to be offered -- it's not, it's not clear whether it's
15 offered for the truth of the matter asserted or whether it's
16 opinion or the state-- or the statement of counsel as to her
17 own impressions of her own intentions. And I would like to
18 either object to its admission or request a limiting instruc-
19 tion on its use.

20 JUDGE STEINBERG: Well. Mrs. Schmeltzer?

21 MS. SCHMELTZER: Your Honor, I think it's very
22 relevant to the case. It certainly concerns matters that Mr.
23 Honig has been interested in. It goes to the whole knowledge
24 of classical music argument which the Commission was concerned
25 with in the Designation Order, and I think it should come into

1 the record.

2 MS. LADEN: I agree with that, Your Honor.

3 JUDGE STEINBERG: Okay. Objection is overruled for
4 the reasons stated by Mrs. Schmeltzer and --

5 MR. HONIG: On page 7 I object to paragraph 15 for
6 the, for the same reason, that this is opinion and I would
7 like an instruction indicating that this comes in as the
8 witness's opinion, if at all.

9 MS. SCHMELTZER: The witness can be cross-examined
10 on this, Your Honor, but again this is relevant to the issues
11 in this proceeding.

12 MS. LADEN: Your Honor, what was the --

13 JUDGE STEINBERG: It was --

14 MR. HONIG: Paragraph 15.

15 JUDGE STEINBERG: Yeah, paragraph 15, page 7,
16 objection because it's, it's opinion, in essence.

17 MS. LADEN: I have no objection.

18 JUDGE STEINBERG: Okay. I -- it's clearly state of
19 mind and opinion and the objection is overruled, and I think
20 that it's, it's relevant. And as I said, if you want to
21 attempt to pin the witness down and show --

22 MR. HONIG: Okay.

23 JUDGE STEINBERG: -- something else, that's fine.

24 MR. HONIG: Paragraph 17, last sentence, same
25 objection.